IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO.61 OF 1996

Shri Madhusudan R. Mahambre,
H.No.47, Nanoda,
Post Assonora,
Goa-403 503..... **APPELLANT**

VERSUS

1. Special Land Acquisition
   Officer (North),
   Mapusa, Goa;

2. Executive Engineer,
   Works Division VI,
   Irrigation Department,
   T.I.P. Office Complex,
   Colvale Road,
   Bardez, Goa..... **RESPONDENTS.**

Shri J.P. Mulgaonkar, Advocate for the Appellant.

Shri V.P. Thali, Additional Advocate General, with Shri H.R. Bharne, Government Advocate,for the Respondents.

CORAM : V.C. DAGA,J.

DATED : JUNE 14, 2002.

ORAL JUDGMENT

This Appeal arises from the Judgment dated 22nd February 1996 passed in Land Acquisition Case No.78 of 1993 by the Additional District Judge, at Panaji.

FACTS IN BRIEF

2. The facts in brief relevant for the decision are:

The Government vide Notification issued under Section 4 of the Land Acquisition Act, 1894 ("the Act" for short) and published in the Government Gazette dated 7-11-1991, sought to acquire an area of 21090 square metres of the property of the Appellant situated at Latambarcem in Bicholim taluka for the construction of Sanquelim Branch Canal from Ch.4200 metres to 6045 metres of LBMC of Tilari Irrigation Project. Notification under Section 6 was issued on 5-3-1992 and published in Government Gazette dated 30-4-1992. The Land Acquisition Officer had awarded compensation at the rate of Rs.8/- per square metre. In the reference proceedings under Section 18 of the said Act, the learned Additional District Judge refused to enhance compensation from Rs.8/- to Rs.40/- per square metre as claimed by the Appellant and was pleased to dismiss the Reference holding that the compensation awarded by the Land Acquisition Officer was fair and reasonable.

SUBMISSIONS:

3. Learned Counsel Shri J.P. Mulgaonkar, appearing for the Appellant, submitted that in terms of Section 23 of the said Act, the market value can be fixed at which property changes hands from a willing buyer to a willing seller dealing at arms length and in the process of ascertaining the market value, the comparative sale transactions of smaller area and/or small plots can also be taken into account. The learned Counsel based on the evidence on record submitted that the Reference Court could have reduced the price by 33% considering the fact that the area sought to be acquired was large and undeveloped. In his submission this was a perfectly permissible exercise which Reference Court ought to have done in view of the catena of decisions of this Court as well as of the Apex Court on this point. He further submitted that the land sought to be acquired had all the building potential. According to him, there was no justification on the part of the Reference Court to refuse to grant enhanced compensation as claimed by the Appellant. He placed reliance on the judgment of the Apex Court in the case of K. Vasunera Devi v. Revenue Divnl. Officer (AIR 1995 SC 2481) in support of his submission.

4. Shri V.P. Thali, Additional Advocate General appearing for the Respondent State, submitted that the Land Acquisition Officer rightly determined the amount of compensation. The Reference Court was justified for want of adequate evidence on record in refusing to enhance the compensation and to accept the rate demanded by the Appellant. He, therefore, submitted that this Appeal is devoid of any merit and needs no interference. He placed reliance on the Division Bench judgment of this Court in the case of **Union of India v. V.M. Salgaonkar and Bros.** (1989(1) G.L.T. 251) to contend that the property acquired was large, away from main road and in area which was not developed; whereas sale instances were of small plots which were rightly not taken into account by the Reference Court while rejecting Reference under the Act.

ISSUE:

5. Considering the rival contentions, the point for determination is as under:-

> Whether the Appellant is entitled to claim enhanced compensation more than Rs.8/-, which was the rate awarded by

the Land Acquisition Officer and
affirmed by the Reference Court.
If yes, to what extent ?

CONSIDERATION

6. Upon hearing the learned Counsel for the parties and on perusal of the record, it is seen that the Appellant had examined two witnesses, viz. the Appellant himself as A.W.1, Shri Narayan Shitaram Parshekar as A.W.2 and one Shri Vaman Kalangutkar as A.W.3. in support of the claim for enhancement, whereas the Respondents had examined one Shri M.P. Hudedgaddi, a Technical Assistant working in the Irrigation Department, so as to counter the claim for enhancement set up by the Appellant.

7. The Appellant himself in the oral evidence could not advance his case except claiming enhanced compensation at the rate of Rs.40/-per square metre. In support of his claim, he relied upon the sale deeds dated 9-9-1988 entered between Pandurang Rama Govekar and his wife on one hand, and one Shri Vaman Manohar Calangutkar, on the other hand. He also relied upon the sale transaction between Narayan Parshekar and his vendor Pandurang Govekar.

8. In order to prove above sale transaction one Narayan Shitaram Parshekar was examined, who deposed on oath that he had purchased a plot admeasuring 300 square metres situated at Nanora from one Pandurang Rama Govekar at the rate of Rs.40/- per square metre. He proved xerox certified copy of the said land, marked as Exhibit P.W.1/A. According to him, the said land is situate at a distance of about half a kilometre from the plot sought to be acquired by the State. In his cross-examination, he was made to admit that the plot purchased by him is adjacent to road and there are houses in the neighbourhood. He also stated that the market value of the land in the vicinity of his plot was around Rs.40/- per square metre and his plot had a building potential value.

9. The next witness examined in support of another sale deed was Mr. Vaman Kalangutkar who claimed to have purchased plot admeasuring 260 square metres for the price of Rs.15,000/- from Pandurang Govekar under sale deed dated 9-9-1988, which came to be exhibited as A.W.1/B. He also deposed that the distance between the land acquired by the State and his plot is about 1 kilometre. He was also made to admit in the cross-examination that the plot in question touches the road on one side and was developed and had building potential.

10. The witness examined by the Respondent one M.P. Hudedgaddi (R.W.1) was a person working in the Irrigation Department as a Technical Assistant. He tried to prove that the land acquired by the State and the comparable sales produced by the Appellant have no similarity and the land acquired is at a distance of about 1.5 kilometres from the plots in question. He went on to depose that the rate of compensation fixed by the Land Acquisition Officer was reasonable and fair.

11. The learned Counsel for the Appellant during the course of hearing moved one application under Order 41, Rule 2 of C.P.C. for production of additional document, namely, Award passed by the Special Land Acquisition Officer (N), Mapusa, Goa, in the very case. The same is taken on record by consent of parties. The Respondents having admitted this document the same was exhibited as Exhibit X.

12. The determination of the market value on the basis of small piece of land with potentialities for urban use is an intricate exercise. The market value or a price of property for the purposes of Section 23 is stated to be the price at which the property changes hands from a willing seller to a willing, but not too anxious a buyer, dealing at arms

length. The determination of market value, as one author puts it, is the prediction of an economic event, viz., the price outcome of a hypothetical sale expressed in terms of probabilities. Prices fetched for similar lands with similar advantages and potentialities under bonafide transactions of sale at or about the time of the preliminary notification are the usual, and indeed the best, evidences of market value. Other methods of valuation are to be resorted to if the evidence of sale of similar lands is not available.

13. It is trite proposition that prices fetched for small plots cannot form safe basis for valuation of large tracts of land as the two are not comparable properties as held by the Apex Court in the case of **Collector of Lakhimpur v. B.C. Dutta** (AIR 1971 SC 2015); **Padma Uppal v. State of Punjab** (AIR 1977 SC 580) and **Kaushalya Devi Bogra v. Land Acquisition Officer, Aurangabad** (AIR 1984 SC 892). The principle that evidence of market value of sales of small, developed plots is not a safe guide in valuing large extents of land has to be understood in its proper perspective.

14. In the case of **Kaushalya Devi Bogra v. Land Acquisition Officer, Aurangabad** (supra), the

Supreme Court ruled that two principles relating to the matter of fixation of compensation relevant for the purpose may be kept in view. When large tracts are acquired, the transactions in respect of small properties do not offer a proper guideline. Therefore, any valuation of transaction with regard to smaller property is not taken a real basis for determining compensation for larger tracts of property. In certain other cases, the Apex Court indicated that for determining the market value of a large property on the basis of such sale transactions, a deduction should be given.

15. In the case of **Collector of Lakhimpur v. B.C. Dutta (supra), the Supreme Court observed that** it was well known that when large area, like the one which was subject-matter of the acquisition, had to be sold, it could not be possible to fetch a price at the same rate at which smaller plots could be sold. In that case an average price per katha was taken on the basis of four sale deeds by reducing average market price by 33%.

16. In **Special Land Acquisition Officer, Bangalore v. T. Adinarayan Setty** (1959 SC 429), reduction of 25% was indicated; while there are certain other cases where the view was that the

reduction could be to the extent of one third. It is needless to mention that in scheme for fixation of compensation, there is bound to be some amount of arbitrariness.

17. The Apex Court in the case of **Brig. Sahib Singh Kalha etc. v. Amritsar Improvement Trust and others,** (AIR 1982 SC 940), had occasion to indicate that reduction for land acquired for roads and other developmental expenses can be deducted to work out the amount of compensation. The Apex Court in the said judgment observed as under:-

> "It is well settled principle of valuation that where there is a large area of undeveloped land under acquisition, provision has to be made for providing the minimum amenities of town life such as water connections, well laid-out roads, drainage facility, electric connections etc. The process necessarily involves deduction of the cost of factors required to bring the undeveloped lands on a par with the developed lands."

18. In **Smt. Tribeni Devi and others v. The Collector, Ranchi** (1972 SC 1417), the Apex Court allowed the deduction of 33.3% towards the cost of development and held that the cost of development may range from 23 to 30% depending on the situation of the land and the stage of development.

19. The Apex Court in the case of **Administrator Genl. of West Bengal, v. Collector, Varanasi** (AIR 1988 SC 943), has applied the twin tests and held that 50% of the deduction should be made when the sale transactions related to smaller extent of lands were found to be genuine and relied on to determine the market value of large tract of land and 50% deduction was found to be reasonable in that case.

20. In **Bhagwathula Samanna and others v. Special Tahsildar and Land Acquisition Officer, Visakhapatnam Municipality** (AIR 1992 SC 2298), the Apex Court held that since the lands are developed area, no deductions towards development charges be made.

21. In **Vijay Kumar Moti Lal v. State of Maharashtra (AIR 1981 SC 1632) and Spl. Tehsildar, Land Acqn., Vishakapatnam v.,Smt. A. Mangala Gowri** (1992 AIR SCW 319), the only question was regarding

the deduction for developmental charges. Now the question is what should be the ratio of deduction while determining compensation based on sales relating to smaller pieces of land ? Gujarat High Court had deducted 60% of the value and the Apex Court in **M/s Hasanali Khanbhai and Sons v.** State of Gujarat (C.A.No.3263/79 dated 26th July, 1995) upheld the said deduction of 60% made by the High Court.

FINDINGS

22. In my view, the proper method for determining compensation in respect of the lands involved in the present Appeal should be by providing suitable deductions on account of various factors referred to hereinabove. Allowances will have to be made for the land which will have to be left vacant on account of roads, lanes, parks etc. and the land which would then be available for being sold as plots would be taken into account and then further allowances will have to be made for development costs for providing roads, electricity, water connection facilities, etc. Thus the cost for the development has to be deducted and the price so arrived at could be considered as compensation for the whole acquired land. Such manner of determination of compensation, in my opinion, is clearly permissible. Merely because

the land is undeveloped does not necessarily mean that the land should be valued only as undeveloped land.

23. In the instant case, as stated in para 11 one more document was allowed to be brought on record by consent of parties during the pendency of this Appeal, i.e. the Award passed by the Land Acquisition Officer in the very same case; wherein; one of the sale instances quoted in the award itself is that of a smaller plot which was sold at the rate of Rs.30/- per square metre. In the wake of the entire material available on record, it is clear that the prices of small plots are ranging in between Rs.30/- to Rs.57/- per square metre. Therefore, in view of the law laid down by the Apex Court, the value of the comparable sales could be slashed down by 60% and if it is slashed down by 60%, then in that event it would be reasonable to award compensation for the land in question at the rate of Rs.12 per square metre. In this view of the matter, I am of the opinion that the land in question can safely be valued at the rate of Rs.12/- per square metre and, accordingly, the Appellant in my opinion shall be entitled for enhanced compensation. In other words, the Appellant would be entitled for enhancement of the compensation at the rate of Rs.4/- over and above the compensation awarded by the Land Acquisition Officer.

CONCLUSION

24. In this view of the matter, the Judgment and Order of the Additional District Judge, Panaji, dated 22nd February, 1996 is modified and the rate of Rs.8/- per square metre is substituted with that of Rs.12/- per square metre and it is held that the Appellant shall be entitled to claim compensation at the rate of Rs.12/- per square metre.

25. In the result the Appeal partly succeeds with no order as to costs.

V.C. DAGA, J.

ac.